

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDZOAI,
Plaintiff,

v.

RON DAVIS, et al.,
Defendants.

Case No. 18-05558 BLF (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND; DENYING
APPLICATION FOR WAIVER OR
MODIFICATION OF FILING FEES**

(Docket No. 13)

Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983. The Court dismissed the complaint with leave to amend for Plaintiff to file an amended complaint that complies with Rules 18(a) and 20(a) of the Federal Rules of Civil Procedure. (Docket No. 7.) Plaintiff has filed an amended complaint. (Docket No. 10.)

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any

1 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
2 upon which relief may be granted or seek monetary relief from a defendant who is immune
3 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
4 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
6 elements: (1) that a right secured by the Constitution or laws of the United States was
7 violated, and (2) that the alleged violation was committed by a person acting under the
8 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

9 **B. Plaintiff's Claims**

10 Plaintiff's original complaint was problematic because it contained unrelated claims
11 against different individuals at SQSP based on separate incidents that occurred during July,
12 August, September 2018. (Docket No. 7 at 2.) In granting leave to amend, the Court
13 advised Plaintiff that an amended complaint must contain "only related claims against the
14 appropriate Defendants" to comply with Rules 18(a) and 20(a) of the Federal Rules of
15 Civil Procedure. (*Id.* at 3.) However, the amended complaint does not remedy this defect.

16 Plaintiff claims that on July 30, 2018, when he arrived at SQSP, he was placed into
17 a single man cage for over ten hours in unsanitary conditions and without toilet access, in
18 violation of his Eighth and Fourteenth Amendment rights. (Am. Compl. at 4.) Plaintiff
19 also claims that Defendant Malikian destroyed his legal and personal correspondence "to
20 obstruct his access to the courts," and that Defendant Malikian also threatened to beat and
21 batter Plaintiff because he "does not like his kind of people," in violation of First, Sixth,
22 Eighth, and Fourteenth Amendment rights. (*Id.*) Plaintiff also claims that on August 14,
23 2018, he was shot at by Officer Clawson during an altercation with other inmates, and that
24 this use of deadly force was "out of retaliation for complaining." (*Id.* at 6.) Plaintiff also
25 claims that after he was transferred to protective custody, he was repeatedly denied access
26 to the law library, religious services, mental health services, cleaning supplies, soap, clean
27 clothing and linen exchanges, among other deprivations, in violation of his First, Sixth,

1 Eighth, and Fourteenth Amendment rights. (*Id.* at 8.)

2 “A party asserting a claim, counterclaim, crossclaim, or third-party claim may join,
3 as independent or alternative claims, as many claims as it has against an opposing party.”
4 Fed. R. Civ. P. 18(a). Accordingly, “multiple claims against a single party are fine, but
5 Claim A against Defendant 1 should not be joined with unrelated Claim B against
6 Defendant 2.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims
7 against different defendants belong in different suits,” not only to prevent the sort of
8 “morass” that a multi-claim, multi-defendant suit can produce, “but also to ensure that
9 prisoners pay the required filing fees – for the Prison Litigation Reform Act limits to 3 the
10 number of frivolous suits or appeals that any prisoner may file without prepayment of
11 required fees.” *Id.* (citing 28 U.S.C. § 1915(g)).

12 The amended complaint contains multiple claims against different defendants at
13 SQSP. These claims and defendants are not all related to each other and do not all arise
14 out of the same transaction, occurrence, or series of transactions or occurrences. Fed. R.
15 Civ. P. 20(a)(2). “A buckshot complaint that would be rejected if filed by a free person –
16 say, a suit complaining that A defrauded plaintiff, B defamed him, C punched him, D
17 failed to pay a debt, and E infringed his copyright, all in different transactions – should be
18 rejected if filed by a prisoner.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (noting
19 that, in prisoner complaint seeking to join 24 defendants and approximately 50 distinct
20 claims, prisoner made no effort to show that 24 defendants he named had participated in
21 the same transaction or series of transactions or that a question of fact is common to all
22 defendants). Plaintiff’s amended complaint is such a “buckshot complaint,” and should be
23 rejected. *Id.*

24 Accordingly, the Court finds that the multiple claims against multiple defendants at
25 SQSP are improperly joined in this single action. In the interest of justice, Plaintiff shall
26 be granted one final opportunity to file a second amended complaint containing only
27 related claims against properly joined Defendants. This being Plaintiff’s second
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1 opportunity to correct this deficiency, no further opportunities shall be given if he again
2 fails to comply with Rules 18(a) and 20(a) in the second amended complaint.

3 **C. Pending Motion**

4 Plaintiff was granted leave to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. §
5 1915, with an initial filing fee of \$43.15 being immediately due and fees thereafter to be
6 paid as were available in Plaintiff’s prisoner account. (Docket No. 6.) The initial filing
7 fee was calculated at 20 percent of \$215.75, which was the amount indicated on the
8 Certificate of Funds in Prisoner’s Account as both the average deposit each month to
9 Plaintiff’s prisoner’s account for the most recent six-month period and the average balance
10 in the prisoner’s account each month for the same six-month period. (Docket No. 2-1 at
11 1.) Plaintiff has filed an application for the total filing fee of \$350 to be waived or
12 modified. (Docket No. 13.)

13 Section 1915 permits indigent prisoner plaintiffs to proceed in a civil action without
14 the prepayment of filing fees, but still requires that the entire filing fee be paid. In granting
15 Plaintiff’s IFP motion, the Court found that Plaintiff showed an ability to pay an initial
16 partial filing fee pursuant to § 1915(B)(1). (Docket No. 6 at 1.) The prison trust account
17 office was instructed to take funds for the remainder of the filing fee from Plaintiff’s
18 account in accordance with § 1915(B)(1), and instructions were provided. (*Id.* at 1-2.)
19 The Court finds no further modification of this order regarding payment of fees is
20 warranted. Accordingly, Plaintiff’s application is DENIED.

21
22 **CONCLUSION**

23 For the foregoing reasons, the Court orders as follows:

24 1. Plaintiff’s application for modification or reduction of the filing fee is
25 **DENIED.** (Docket No. 13.)

26 2. The amended complaint is **DISMISSED with leave to amend.** Within
27 **twenty-eight (28) days** of the date this order is filed, Plaintiff shall file a **second amended**
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complaint that complies with Rules 18(a) and 20(a) of the Federal Rules of Civil Procedure. The second amended complaint must include the caption and civil case number used in this order, Case No. C 18-05558 BLF (PR), and the words “SECOND AMENDED COMPLAINT” on the first page. If using the court form complaint, Plaintiff must answer all the questions on the form in order for the action to proceed.

The second amended complaint supersedes all previous complaints, which are treated thereafter as non-existent. *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). Consequently, claims not included in an amended complaint are no longer claims and defendants not named in an amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).


Failure to respond in accordance with this order in the time provided will result in the dismissal of this action without prejudice and without further notice to Plaintiff. Furthermore, if the second amended complaint fails to comply with Rules 18(a) and 20(a), this action shall be dismissed for improper joinder of claims and defendants.

The Clerk shall include two copies of the court’s complaint with a copy of this order to Plaintiff.

This order terminates Docket No. 13.

IT IS SO ORDERED.

Dated: July 11, 2019


BETH LABSON FREEMAN
United States District Judge